

S9

THIRD SUPPLEMENTAL AGREEMENT

This Agreement (the "Third Supplemental Agreement") is made as of the 18th day of February, 1992, by and among the Town of Acton, Massachusetts (the "Town"), a Massachusetts municipal corporation, having a usual place of business at the Acton Town Hall, Acton, MA 01720, acting by and through its Board of Selectmen under the terms and conditions of a certain Comprehensive Development Agreement (the "Comprehensive Development Agreement") dated as of June 23, 1989, and recorded in Book 19966, Page 008 with the Middlesex South District Registry of Deeds, and a Supplemental Agreement (the "Supplemental Agreement") dated as of October 27, 1989, and recorded in Book 20205, Page 227 with said Deeds, and a Second Supplemental Agreement (the "Second Supplemental Agreement") dated as of August 26, 1991 and recorded in Book 21513, Page 494 with said Deeds (the Comprehensive Development Agreement, as supplemented by the Supplemental Agreement and as further Supplemented by the Second Supplemental Agreement, hereinafter called the "Agreement"), the Acton Housing Authority (the "AHA"), having a usual place of business at Acton Town Hall, Acton, MA, R. Smith Associates, Inc. (the "Developer"), a Massachusetts corporation having a usual place of business at 292 Great Road, Acton, MA 01720, and Boston Federal Savings Bank (the "Lender"), having a usual place of business at 17 New England Executive Park, Burlington, MA 01803.

RECITALS

Reference is hereby made to the following facts:

A. The Town and the Developer entered into the Agreement in order to set out the terms and conditions under which the Development Property (as defined in the Agreement) would be developed.

B. Section 3.3(c) of the Comprehensive Development Agreement requires that at least thirty five (35%) percent of the Units constructed on the Development Property be sold and resold as "Restricted Units" as defined in the Agreement.

C. Section 3.3(f) of the Comprehensive Development Agreement requires the Developer, as part of the thirty-five (35%) percent Restricted Unit requirement, to convey five (5) units to the AHA for the price of Sixty Five Thousand Dollars (\$65,000.00) for each unit. The AHA has given the Developer a deposit of Ten Thousand (\$10,000) Dollars and the Developer has given the AHA recorded Rights of First Refusal to purchase said five (5) units, which were attached to the Comprehensive Development Agreement and recorded in Book 19966, Page 254 through Page 278, with said Deeds.

D. Article V of the Comprehensive Development Agreement requires the Developer to construct a Senior Center as a common area and facility in the Condominium and to lease the Senior Center to the Town upon the terms and conditions as set forth in the Agreement.

E. The Developer has created the Audubon Hill South Condominium by Master Deed dated November 15, 1990, recorded November 20, 1990, in Book 20875, Page 79 with the Middlesex South District Registry of Deeds (the "Master Deed"). Section 9.2 of the Master Deed indicated that Unit Numbers 1, 6, 8, 10, 13, 14, 17, 18, 23, 27, 31, 38, 48, 2, 4, and 25 would be "Restricted Units" in partial satisfaction of Section 3.3 (c) of the Comprehensive Development Agreement and that Unit Numbers 2, 4, and 25 (the "A.H.A. Restricted Units") would each be conveyed to the Acton Housing Authority for the price of Sixty Five Thousand (\$65,000.00) Dollars in partial satisfaction of Section 3.3(f) of the Comprehensive Development Agreement.

F. The Developer and the Town, by execution of Amendment No. 1 to the Master Deed of Audubon Hill South Condominium ("Amendment No. 1") recorded as Instrument No. 51 of July 26, 1991, in Book 21311, Page 176, with said Deeds removed Unit 38 as a Restricted Unit and substituted Unit 29 as a Restricted Unit. The Developer and the Town by execution of the Second Supplemental Agreement modified the development scheme by removing Units 23, 27, 29 and 31 of the Audubon Hill South Condominium as Restricted Units and agreeing to substitute Units 125, 127, 130 and 132 as Restricted Units at the time of the creation of the Audubon Hill North Condominium. The Second Supplemental Agreement also removed Unit 25 of the Audubon Hill South Condominium as a "A.H.A. Restricted Unit" and agreed to substitute Unit 130 as a "A.H.A. Restricted Unit" at the time of the creation of the Audubon Hill North Condominium. These changes were also confirmed by the recording of Amendment No. 3 to the Master Deed of Audubon Hill South Condominium ("Amendment No. 3") recorded as Instrument No. 620 of November 1, 1991, in Book 21513, Page 493, with said Deeds.

G. Despite an active sales and marketing campaign, the Developer has had difficulty in finding a sufficient number of qualified purchasers ("Eligible Purchasers" as defined in the Agreement) to purchase the "Restricted Units" in a manner to accommodate the construction and orderly sale of the Units as approved by the Town. Further, economic conditions have impacted upon the Developer's ability to construct the Senior Center and the North Phase, as originally approved, without the modification of the Agreement.

H. Under Section 6.2 (b) of the Comprehensive Development Agreement, there may be no modification of the Agreement without the Construction Lender's written consent.

I. Because of market conditions and other causes reasonably beyond the Developer's control, the Project will not be completed within the period required by the Agreement.

J. Accordingly, the Developer and the Lender have requested that the Town and the AHA join with the Developer and the Lender in modifying certain terms and conditions of the Agreement, as set forth below.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements in this Third Supplemental Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The Agreement and all other agreements by and between the Town and the Developer are hereby amended to remove and make null and void and of no effect all references to the Developer's obligation to create and sell Restricted Units or "A.H.A. Restricted Units" in either the Audubon Hill South Condominium or the Audubon Hill North Condominium, except for four (4) Restricted Units already constructed and sold as Restricted Units. Only Unit Numbers 17, 18, 25 and 48 in the Audubon Hill South Condominium which have already been sold as Restricted Units shall remain as Restricted Units.

2. The Lender guaranties the disbursement of a maximum of Three Hundred Thousand (\$300,000.00) Dollars to be utilized for all costs associated with the construction of the Senior Center on the Development Property in accordance with the plan entitled "Audubon Hill Senior Center" dated December 5, 1991, the Preliminary Outline Specifications of the Elderly Center Addition dated July 29, 1988, as amended January, 1992 and the terms and conditions of the Agreement and any modifications to said plans or the Agreement reasonably requested or approved by the Town. The Lender specifically waives any right it may have under Section 6.2 (a) of the Comprehensive Development Agreement or otherwise to be released from the obligation to construct the Senior Center and the Lender acknowledges that any successor to the Lender which may acquire the Development Property in any manner shall be bound by the provisions of Article V of the Comprehensive Development Agreement as modified by the provisions of this Section 2. The Agreement is hereby amended to require that the Developer begin the construction of the Senior Center, as aforesaid, within thirty (30) days after the execution of this Third Supplemental Agreement and complete the Senior Center upon the earlier of the ninetieth (90th) day after the closing of the sale of the Thirty-Eighth (38th) Unit in the Audubon Hill South Condominium or December 31, 1992, subject to the provision that the Lender's Legal Lending Limit with the Developer does not allow the Lender to advance more than \$4,300,000.00 to the Developer at any one time.

3. In lieu of satisfying the provisions of Sections 3.4 (b) and 3.4 (h) of the Comprehensive Development Agreement with respect to the Developer's inability to secure Eligible Purchasers for the majority of the Restricted Units, the Developer shall contribute to the Town the sum of One Hundred and Thirty Thousand (\$130,000.00) Dollars from the proceeds of the sale of the first unit to close after the execution of this Third Supplemental Agreement to the Agreement by all required parties, to be held and applied by the Town for elderly purposes in accordance with Sections 3.4 (b) and 3.4 (h) of the Comprehensive Development Agreement.

4. In partial consideration of the Developer reimbursing to the AHA, its \$10,000 deposit as referenced in Section C of this agreement, the Rights of First Refusal granted by the Developer to the AHA dated as of March 8, 1989 and the provisions for transfer of

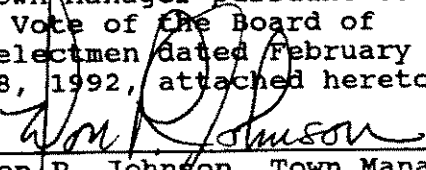
five (5) Units ("the A.H.A. Restricted Units") to the AHA set forth in Section 3.3 (f) of the Comprehensive Development Agreement are hereby released and shall be null and void and of no further effect.

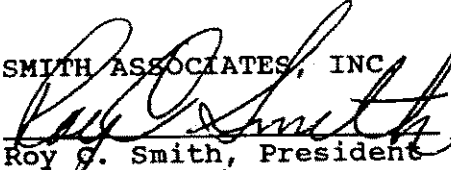
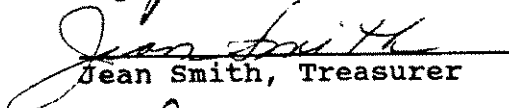
5. Pursuant to Sections 2.1 and 9.13 of the Comprehensive Development Agreement, the time for performance of the Agreement is hereby extended one (1) year to June 23, 1993, provided that the Town, in its sole discretion, may elect to extend such time for performance further.

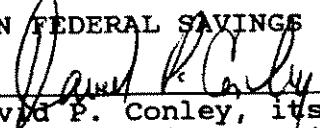
6. Capitalized terms used in this Third Supplemental Agreement and not otherwise defined shall have the meaning ascribed to them in the Agreement.

7. The parties hereto specifically ratify and confirm the Agreement, except as amended hereby and the Comprehensive Development Agreement, the Supplemental Agreement and the Second Supplemental Agreement shall remain in full force and effect and this Third Supplemental Agreement shall be construed so as to supplement, clarify and amend such prior agreements.

IN WITNESS WHEREOF, the parties hereto have caused this Modification Agreement to be executed under seal as of the date first written above.

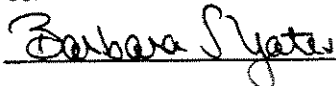
TOWN OF ACTON
Acting by and through its
Town Manager pursuant to
a Vote of the Board of
Selectmen dated February
18, 1992, attached hereto

Don P. Johnson, Town Manager

R. SMITH ASSOCIATES, INC.
By: 
Roy O. Smith, President

Jean Smith, Treasurer

BOSTON FEDERAL SAVINGS BANK
By: 
David P. Conley, its
Executive Vice-President
For Authority, See Certificate
of Vote attached hereto

This Third Supplemental Agreement is assented to by the Acton Housing Authority for purposes of releasing all of its rights as set forth in Section 4 of this Third Supplemental Agreement.

ACTON HOUSING AUTHORITY

By: 

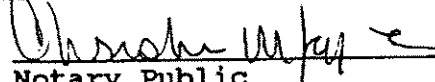
For Authority, See Certificate
of Vote attached hereto

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

February 25, 1992

Then personally appeared the above-named Don P. Johnson, Town Manager, and acknowledged the foregoing instrument to be the free act and deed of the Town of Acton, before me

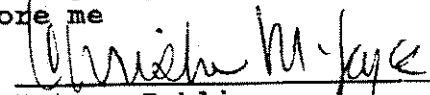

 Notary Public
 My commission expires: 5-13-94

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

February 25, 1992

Then personally appeared the above-named Roy C. Smith, President, as aforesaid, and acknowledged the foregoing to be the free act and deed of R. Smith Associates, Inc., before me

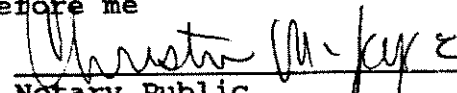

 Notary Public
 My commission expires: 5-13-94

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

February 25, 1992

Then personally appeared the above-named Jean Smith, Treasurer, as aforesaid, and acknowledged the foregoing to be the free act and deed of R. Smith Associates, Inc., before me

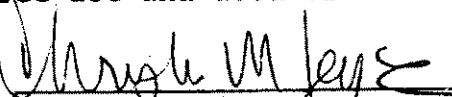

 Notary Public
 My commission expires: 5-13-94

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

February 25, 1992

Then personally appeared the above-named David P. Conley, Executive Vice-President, as aforesaid, and acknowledged the foregoing instrument to be the free act and deed of Boston Federal Savings Bank, before me


 Notary Public
 My commission expires: 5-13-94

COMMONWEALTH OF MASSACHUSETTS

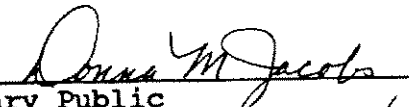
Middlesex, ss.

February 25, 1992

Then personally appeared the above-named



Chairperson of the Acton Housing Authority, as aforesaid, and acknowledged the foregoing instrument to be the free act and deed of the Acton Housing Authority, before me


Notary Public

My commission expires: 10/30/98

i/modifyaudubonhill

XIII. ATTACHMENT (NO. 1)CERTIFICATE

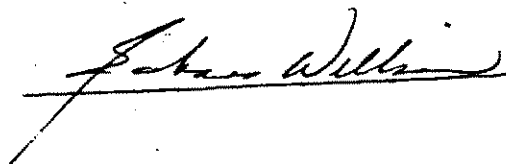
I, the undersigned, the duly appointed, qualified and acting Secretary of the ACTON (Housing) (~~Redevelopment~~) Authority, do hereby certify:

THAT the attached extract from the Minutes of the REGULAR meeting of the members of said Authority held on MARCH 2, 1992, is a true and correct extract of the original Minutes of said Meeting on file and or record insofar as said original Minutes related to the matters set forth in said attached extract, and

THAT on the date of this Meeting each member present and voting was as resident of the ~~City~~/Town of ACTON; and

THAT notice of such meeting was duly filed more than twenty-four hours prior thereto with the ~~(City)~~ (Town) Clerk of the ~~(City)~~ (Town) of ACTON in accordance with the requirements of Chapter 303 of the Acts of 1975 inserted in the Massachusetts General Laws by Chapter 39 Section 23B as amended.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Authority this 2nd day of MARCH.



X. EXTRACTS OF MEETINGS

EXTRACTS FROM THE MINUTES OF A REGULAR
MEETING OF THE ACTON
HOUSING AUTHORITY HELD ON MARCH 2, 1992

The Members of the ACTON Housing Authority met in REGULAR
session at 68 WINDSOR AVE. in the City of ACTON,
Massachusetts at 7:30 o'clock p m., on MARCH 2, 1992.
The meeting was called to order by the Chairman and upon roll call, those present
and absent were as follows:

Present:

JOSEPH MERCURIO
BARBARA YATES
BARBARA WILLSON
PETER BERRY

Absent:

JEAN SCHOCH

By unanimous consent _____ acted as Chairman for the first
meeting.*

*This will appear in minutes of first meeting only.

BARBARA WILLSON moved that the foregoing resolution be adopted as introduced and read, which motion was seconded by JOSEPH MERCURIO and upon roll call the "Ayes" and "Nays" were as follows:

AYES

JOSEPH MERCURIO
BARBARA YATES
BARBARA WILLSON
PETER BERRY

NAYS

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The Chairman thereupon declared said motion carried and said resolution adopted.

